

FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS United States Trustee	DEFENDANTS David J. Howe	
ATTORNEYS (Firm Name, Address, and Telephone No.) Richard T. King, Assistant U.S. Trustee, US Trustee's Office, 446 Main Street, 14 th Floor, Worcester, MA 01608 508-793-0555	ATTORNEYS (If Known) Mark W. Bartolomei, Esq., 51 Union Street, Suite G10 Worcester, MA 01608 508-754-5900	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION: Denial of Discharge pursuant to 11 U.S.C. § 727 (a)(3) and (5)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3 etc.)		
FRBP 7001(1) — Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) — Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) — Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) — Objection/Revocation of Discharge <input checked="" type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) — Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) — Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) — Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) — Injunctive Relief <input type="checkbox"/> 71-Injunctive relief— reinstatement of stay 72-Injunctive relief— other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case — 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR David J. Howe		BANKRUPTCY CASE NO. 10-43053-MSH	
DISTRICT IN WHICH CASE IS PENDING: MA	DIVISIONAL OFFICE: Central	NAME OF JUDGE: Hoffman	
RELATED ADVERSARY			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
/s/ Richard T. King			
DATE June 30, 2011	PRINT NAME : Richard T. King		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**'UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

In re:)	
)	
DAVID J. HOWE)	Chapter 7
)	Case No. 10-43053-MSH
Debtor)	
_____)	
)	
WILLIAM K. HARRINGTON)	
UNITED STATES TRUSTEE)	
)	
Plaintiff)	Adversary Proceeding No.
v.)	
)	
DAVID J. HOWE)	
)	
Defendant.)	
_____)	

**COMPLAINT OBJECTING TO DISCHARGE PURSUANT TO
11 U.S.C. § 727(a)(3) and (5)**

Plaintiff, William K. Harrington, United States Trustee, brings this action pursuant to 11 U.S.C. § 727(a)(3) and (5) for denial of the discharge of David J. Howe (the "Defendant" or "Debtor").

In support of this complaint, the UST respectfully states as follows:

PARTIES

1. Plaintiff, William K. Harrington, is the United States Trustee ("UST") appointed pursuant to 28 U.S.C. § 581 for Region One which includes the judicial district of Massachusetts.

2. The Defendant is an individual who has provided an address in this proceeding of 12 Stuart Street, Sudbury, Massachusetts, 01776.

JURISDICTION

3. This is an adversary proceeding in which the United States Trustee is seeking denial of the discharge of the Defendant, under 11 U.S.C. §§ 727(a)(3) and (5). This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(b)(2)(J), this is a “core” proceeding. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

FACTS

4. The Defendant filed a Chapter 7 petition on or about June 16, 2010 (“Petition Date”). On July 21, 2010, the Debtor filed the remaining schedules and statements.

5. The Defendant signed a declaration as to the truthfulness and accuracy of their Petition, Schedules and Statement of Financial Affairs (“SOFA”), under the pains and penalties of perjury.

6. Immediately thereafter, Jonathan R. Goldsmith, Esq. was appointed Chapter 7 trustee (the “trustee”).

7. The section 341 meeting of creditors was held on July 22, 2010.

8. On September 20, 2010, the UST moved for an extension of deadlines for filing a motion to dismiss the Defendant’s case or to object to his discharge as the Defendant had not yet complied with the UST’s document request.

9. On November 19, 2010, the UST moved for a second extension of deadlines for filing a motion to dismiss the Defendant’s case or to object to his discharge as the Defendant had not yet complied with the UST’s document request.

10. On January 18, 2011, the UST moved for an extension of deadlines for filing a motion to dismiss the Defendant's case or to object to his discharge as the Defendant had not yet complied with the UST's document request.

11. On March 18, 2011, the UST moved for an extension of deadlines for filing a motion to dismiss the Defendant's case or to object to his discharge as the Defendant still had not yet complied with the UST's document request. Contemporaneously, the UST filed a motion seeking authority from this Court to conduct an examination of the Defendant under Federal Rule of Bankruptcy Procedure 2004 ("2004 Motion"), and to require the Defendant to produce certain documents to the UST for inspection. On April 6, 2011, this Court allowed the 2004 Motion.

12. The UST scheduled the 2004 examination of the Defendant for April 18, 2011. The Defendant did not appear on that date for his examination.

COUNT I
DENIAL OF DISCHARGE UNDER 11 U.S.C. § 727(a)(3)

13. The UST repeats and incorporates all of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

14. Title 11 U.S.C. § 727(a)(3) provides, in relevant part, that the Court shall grant a debtor a discharge unless ". . . the debtor has concealed, destroyed, mutilated, falsified or failed to keep or otherwise preserve any recorded information, including books, documents, records and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case." *Id.*

15. The Defendant's failure to produce financial documents to the UST, including those required by the Order allowing the 2004 Motion, was not justified under all of the circumstances of the case.

16. The Defendant's concealment of records warrants denial of his discharge pursuant to 11 U.S.C. § 727(a)(3).

COUNT 11
DENIAL OF DISCHARGE UNDER 11 U.S.C § 727(a)(5)

17. The U.S. Trustee repeats and incorporates all of the allegations contained in the preceding paragraphs of this complaint as if fully set out herein.

18. Title 11 U.S.C. § 727(a)(5) provides, in relevant part, that the Court shall grant a debtor a discharge unless “. . . the debtor has failed to explain satisfactorily any loss of assets or deficiency of assets to meet debtor's liabilities.” Id.

19. Based on the Defendant's failure to appear for a 2004 examination, the Defendant has failed to satisfactorily explain the loss of assets or deficiency of assets to meet his liabilities.

20. The Defendant's failure to explain satisfactorily warrants denial of his discharge pursuant to 11 U.S.C. § 727(a)(5).

REQUEST FOR RELIEF

WHEREFORE, the United States Trustee prays that the Court:

- A. Enter a judgment declaring that the discharge of the Debtor from his debts is denied under 11 U.S.C. § 727; and
- B. Enter such other and further relief as is just.

Respectfully submitted,

WILLIAM K. HARRINGTON
United States Trustee, Region I

/s/ Richard T. King

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Dated: June 30, 2011